

SSB 5564 - S AMD 147

By Senator Kohl-Welles

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature recognizes that data  
4 breaches of credit and debit card information contribute to identity  
5 theft and fraud and can be costly to consumers. The legislature also  
6 recognizes that when a breach occurs, remedial measures such as  
7 reissuance of credit or debit cards affected by the breach can help to  
8 reduce the incidence of identity theft and associated costs to  
9 consumers. Accordingly, the legislature intends to encourage financial  
10 institutions to reissue credit and debit cards to consumers when  
11 appropriate, and to permit financial institutions to recoup data breach  
12 costs associated with the reissuance from large businesses and card  
13 processors who are negligent in maintaining or transmitting card data.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.255 RCW  
15 to read as follows:

16 (1) For purposes of this section:

17 (a) "Access device" has the same meaning as in RCW 9A.56.010.

18 (b) "Account information" means: (i) The full, unencrypted  
19 magnetic stripe of an access device; (ii) the full, unencrypted account  
20 information contained on an identification device as defined under RCW  
21 19.300.010; or (iii) the unencrypted primary account number on an  
22 access device or identification device, plus any of the following if  
23 not encrypted: Cardholder name, expiration date, or service code.

24 (c) "Breach" has the same meaning as "breach of the security of the  
25 system" in RCW 19.255.010.

26 (d) "Business" means an individual, partnership, corporation,  
27 association, organization, government entity, or any other legal or  
28 commercial entity that processes more than six million access device

1 transactions annually, and who offers or sells goods or services to  
2 persons who are residents of Washington.

3 (e) "Encrypted" means enciphered or encoded using standards  
4 reasonable for the breached business or processor taking into account  
5 the business or processor's size and the number of transactions  
6 processed annually.

7 (f) "Financial institution" has the same meaning as in RCW  
8 30.22.040.

9 (g) "Processor" means an individual, partnership, corporation,  
10 association, organization, government entity, or any other legal or  
11 commercial entity, other than a business as defined under this section,  
12 that directly processes or transmits account information for or on  
13 behalf of another person as part of a payment processing service.

14 (h) "Service code" means the three or four digit number in the  
15 magnetic stripe or on an access device that is used to specify  
16 acceptance requirements or to validate the card.

17 (i) "Vendor" means an individual, partnership, corporation,  
18 association, organization, government entity, or any other legal or  
19 commercial entity that manufactures and sells software or equipment  
20 that is designed to process, transmit, or store account information.

21 (2) Processors, businesses, and vendors are not liable under this  
22 section if (a) the account information was encrypted during storage and  
23 transmittal at the time of the breach, or (b) the processor, business,  
24 or vendor was certified compliant with the payment card industry data  
25 security standards adopted by the payment card industry security  
26 standards council, and in force at the time of the breach. A  
27 processor, business, or vendor will be considered compliant with  
28 payment card industry data security standards, if its compliance was  
29 validated on all system components where cardholder data is stored,  
30 processed, or transmitted at the time of its last annual security  
31 assessment, and if this assessment took place no more than one year  
32 prior to the time of the breach.

33 (3)(a) If a processor or business fails to take reasonable care to  
34 guard against unauthorized access to account information that is in the  
35 possession or under the control of the business or processor, and the  
36 failure is found to be the proximate cause of a breach, the processor  
37 or business is liable to a financial institution for reimbursement of  
38 reasonable actual costs related to the reissuance of access devices

1 that are incurred by the financial institution to mitigate potential  
2 current or future damages to its access device account holders that  
3 reside in the state of Washington as a consequence of the breach, even  
4 if the financial institution has not suffered a physical injury in  
5 connection with the breach. In any legal action brought pursuant to  
6 this subsection, the prevailing party is entitled to recover its  
7 reasonable attorneys' fees and costs incurred in connection with the  
8 legal action.

9 (b) A vendor, instead of a processor or business, is liable to a  
10 financial institution for the damages described in (a) of this  
11 subsection to the extent that the damages were proximately caused by  
12 the vendor's negligence and if the claim is not limited or foreclosed  
13 by another provision of law or by a contract to which the financial  
14 institution is a party.

15 (4) Nothing in this section may be construed as preventing or  
16 foreclosing any entity responsible for handling account information on  
17 behalf of a business or processor from being made a party to an action  
18 under this section.

19 (5) Nothing in this section may be construed as preventing or  
20 foreclosing a processor, business, or vendor from asserting any defense  
21 otherwise available to it in an action including, but not limited to,  
22 defenses of contract, or of contributory or comparative negligence.

23 (6) In cases to which this section applies, the trier of fact shall  
24 determine the percentage of the total fault which is attributable to  
25 every entity which was the proximate cause of the claimant's damages.

26 (7) The remedies under this section are cumulative and do not  
27 restrict any other right or remedy otherwise available under law,  
28 however a trier of fact may reduce damages awarded to a financial  
29 institution by any amount the financial institution recovers from a  
30 credit card company in connection with the breach, for costs associated  
31 with access card reissuance.

32 NEW SECTION. **Sec. 3.** This act takes effect July 1, 2010.

33 NEW SECTION. **Sec. 4.** This act applies prospectively only. This  
34 act applies to any breach occurring on or after the effective date of  
35 this section."

1        On page 1, line 1 of the title, after "security;" strike the  
2 remainder of the title and insert "adding a new section to chapter  
3 19.255 RCW; creating new sections; and providing an effective date."

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